



राजपत्र, हिमाचल प्रदेश (असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 18 फरवरी, 1997/29 मार्च, 1918

हिमाचल प्रदेश सरकार

निर्वाचन विभाग

अधिसूचना

शिमला-171002, 10 जनवरी, 1997

संख्या 3-14/94-ई० एल० एन०.—भारत निर्वाचन आयोग की अधिसूचना संख्या 82/हि० प्र०-वि० स०/2/94, दिनांक 2 जनवरी, 1997 तदनुसार 12 पौष, 1918 (शक्) अंग्रेजी रूपान्तर सहित, जिसमें हिमाचल प्रदेश उच्च न्यायालय, शिमला, का निर्वाचन अर्जी संख्या 2 वर्ष 1994, का निर्णय निहित है, को जनसाधारण की सूचना हेतु प्रकाशित किया जाता है।

आदेश से,
हस्ताक्षरित/-
मुख्य निर्वाचन अधिकारी,
हिमाचल प्रदेश।

भारत निर्वाचन आयोग

नई दिल्ली,

2, जनवरी 1997

तारीख

12 पौष, 1918 (शक्)

अधिसूचना

संख्या 82/हि0प्र0-वि0स0/2/94.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1994 की अर्जी संख्या 2 में हिमाचल प्रदेश उच्च न्यायालय की तारीख 29 अक्टूबर, 1996 के निर्णय को एतद्द्वारा प्रकाशित करता है।

आदेश से,

घनश्याम खोहर,

सचिव,

भारत निर्वाचन आयोग।

ELECTION COMMISSION OF INDIA

New Delhi,

2nd January, 1997

Dated the

12 Pausa, 1918 (Saka)

NOTIFICATION

No. 82/HP-LA/2/94.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Judgement dated 29th October, 1996 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 2 of 1994.

By order,

GHANSHYAM KHOHAR

Secretary,

Election Commission of India.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ELECTION PETITION NO. 2 of 1994

Date of decision October 29, 1996

Ram Nath Sharma

.. Petitioner

Versus

Ram Dass Malangar & Others

.. Respondents

Coram :

The Hon'ble Mr. Justice P. K. Palli, J.

The Hon'ble Mr. Justice

The Hon'ble Mr. Justice

Whether approved for reporting ? Yes.

For the Petitioner

.. Mr. D. D. Sood, Advocate.

For the Respondent No. 1

.. Mr. S. P. Jain with Mr. R. K. Sharma,
Advocates.

P. K. Palli, Judge :

The Petitioner, who was Congress (I) candidate from 33—Kutlehar constituency, having unsuccessfully contested the Assembly Elections, has filed this petition laying challenge to the election of respondent No. 1, who successfully contested the same as Bhartiya Janata Party candidate from the said constituency.

Elections to the Himachal Pradesh State Legislative Assembly were notified to be held. It was Constituency No. 33—Kutlehar from where the petitioner and respondent No. 1 contested the said election for the Assembly.

Nominations were to be submitted not later than October 16, 1993, scrutiny was held on October 18, 1993, withdrawals of the candidature could be delivered before 3.00 P. M. on October 20, 1993. Polling was to take place on November 9, 1993 followed by a declaration of result. Petitioner, as said above, contested the said election as Congress (I) candidate. Respondent No. 1 successfully contested on the ticket of Bhartiya Janata Party and was declared elected. Respondent No. 2 was candidate of Janta Dal, respondent No. 3, was the contestant on the ticket of Bahujan Smaj Party and respondent No. 4 was an independent candidate.

Counting was held on November 27, 1993, Petitioner polled 13874 votes. Respondent No. 1 secured 14846 votes, respondent No. 2, 2188 votes, respondent No. 3, 1103 votes and respondent No. 4 got 58 votes only. Total number of votes were 32346. 32069 were valid votes and 276 votes were rejected as invalid. Resultantly, respondent No. 1 was declared elected and he secured 14846 as against the petitioner and he won by a margin of 972 votes.

Challenge has been made to the election of respondent No. 1 on the ground that the provisions of the Constitution and Representation of People Act and Rules framed thereunder have not been complied with and also it has materially affected the election result. It is further said that on account of corrupt electoral practices committed by respondent No. 1, it materially resulted in the defeat of the petitioner. The non-compliance of the various provisions have been enumerated in the petition from para 10 (a) to (f) and again in para 11 from sub-para (a) to (g).

In the reply filed on behalf of respondent No. 1, lot many preliminary objections were raised and the controversy raised by way of preliminary objections, was put in the form of issues, which were treated as preliminary, and stand disposed of by a comprehensive and detailed order passed by this Court dated June 21, 1994. It was held that the petition does not suffer from any lacunas and was not liable to be dismissed in limine and further it required determination on other issues framed on the merits of the case.

It is, at this stage that it would be relevant to mention that respondents No. 2 and 4 never put in the contest to the petition despite having been served and respondent No. 3 also never put in appearance, although served by way of substituted service. These respondents have been proceeded *ex-parte*. It is only respondent No. 1, who has laid contest to the election Petition and has resisted the same.

Vide order dated June 21, 1994 passed by this Court, reference to which has already been made above, contents comprising para 11(a) to 11(d) were ordered to be deleted from the petition and in sequence of it a prayer was made calling for an amended petition, but this Court *vide* order dated August 6, 1994 held that there appeared no ground for filing of an amended petition and the prayer was declined. It was when the statement of PW-4 was being recorded, the Court *vide* order dated September 19, 1994, felt that amended petition should be filed and, consequently, the same was ordered to be filed and now forms part of the record. Amended written statement and rejoinder were also filed.

The challenge to the election has been made in para 10 of the petition and in sub-para (a) it is said that the account submitted by respondent No. 1 Annexure P.A. was not true and faithful statement of accounts and in fact the amount has been spent in excess of the prescribed limit. In the return Rs. 9,740/- are said to have been spent, which is said to be false.

In sub-para (b) Rs. 15,000/- are said to have been paid to one Jagmohan Sharma, whose services were engaged for the purposes of printing and writing of appeals on walls and for preparing banners. The receipt of the amount, which was paid, has been annexed as Annexure P. B.

In sub-para (c) Rs. 5,000/- are said to have been paid by respondent No. 1 on October 18, 1993 and this amount was adjusted by Jagmohan Sharma towards the final payment which was actually received by him on November 16, 1993. The receipt has been placed as Annexure P. C.

In sub-para (d), it is said that per Rule 90 of the Conduct of Election Rules, 1961, read with the Schedule, the maximum prescribed limit is Rs. 20,000/- and the amount detailed in sub-para (b) and (c) has not been reflected in the return. It is said that the information about this was disclosed to the petitioner by the above said Jagmohan Sharma on January 1, 1994 at Amb.

In sub-para (e), respondent No. 1 has shown an amount of Rs. 8,400/- having been spent on the hiring of vehicles by him. The two receipts filed alongwith the return are undated and the respondent No. 1 has failed to comply with Rule 86 of the Conduct of Election Rules and particulars in respect of each amount of expenditure alongwith full details, which are required to be disclosed, were not disclosed. The return is said to be not in accordance with law and not a true statement of accounts spent. It is said that two vehicles, described in this sub-para were hired right from October 20, 1993 to November 9, 1993 and Rs. 400/- per day are said to have been paid in respect of the use of vehicle No. HP-02-2677, but with respect to vehicle No. HP-02-3593, a payment of Rs. 400/- only is said to have been made, although in the return both the vehicles have been shown to be used from October 20, 1993 to November 9, 1993. Rs. 400/- are said to have been paid in respect of the other vehicle and that too for one day only, whereas it works out to Rs. 7600/-. Information about this item is said to have been passed out to the petitioner at his residence on December 31, 1993. According to the allegations made in the petition, both these vehicles displaying banners of respondent No. 1 and his party were actually used for the purposes of announcement and distribution of material on all these days, and there was contravention of Section 77 of the Act and Rule 90 of the Rules and was a corrupt practice, as given in Section 123 (6) of the Representation of People Act.

The second limb of attack is towards the distribution of publication in the form of appeal which amounts to character assassination of the petitioner and calculated to prejudice his prospects in the election. This ground has been elaborated in para 11 sub-para (a) to (g).

In sub-para (a), it is said that a news had appeared in Hindi Daily (Uttam Hindu) dated September 22, 1993 carrying following words :

“MILI JANKARI KE MUTABIK SHRI RAM NATH PAR KARAMCHARIYON KE TABADALON PAR PAISE BATORNE, KUTLEHAR VIDHAN SABHA KASHETRA MAIN HUE KATAL BALATKA KE KESON KE MURZAMON KO PANAH DENE KE BATON KO LOGON KE BEECH CHARCHA KA VISHAY BANI RAHI”.

This has been placed as Annexure P. D.

In sub-para (b), it is alleged that respondent No. 1 got thousands of photocopies of this news item published and distributed on November 6, 7 and 8, 1993. This distribution of this publication was made in the entire 33—Kutlehar constituency. Respondent No. 1 is said to have the full know-

wledge that the allegations contained therein were not correct and were false. An appeal is said to have been made by respondent No. 1 to prejudice the prospects of the petitioner. These handbills did not contain any print line and the person who prepared this material. Respondent No. 1 is said to be personally involved in distribution of this material in connivance with several persons, whose names figure in this sub-para alongwith time and date of such distribution. It is also said that a procession was organised by the Bhartiya Janata Party on November 7, 1993. This was in support of respondent No. 1. The handbills, marked as Annexure P E, were distributed in the villages.

In sub-para (c), it is said that a direct appeal was made to the electorate to vote for respondent No. 1, there was a character assassination of the petitioner and he was said to be habitual of taking bribe and sheltering criminals. This information is said to have been supplied to the petitioner by the persons mentioned in sub-para (c) on November 28, 1993 and November 29, 1993 at the residence of the petitioner.

This information is further said to have been supplied to the petitioner by more persons mentioned in sub-paras (d) and (e). It is said that the people had gathered at the residence of the petitioner on November 28 and 29, 1993 expressing their shock that the petitioner had lost the election and it was attributed that the defeat was on account of respondent No. 1, who indulged in the aforementioned character assassination of the petitioner and this is said to have been done for the purpose of his gaining votes.

In sub-para (f), respondent No. 1 and his supporters are said to have connived in causing the photocopies published carrying the news item and further distributing the same amongst the electorates and they fully well knew that the contents were totally false and were not true. This act and conduct on the part of respondent No. 1 and his supporters is said to be a corrupt practice within the meaning of Section 123 (4) of the Act and is said to be sufficient in law to declare the election of respondent No. 1 as void.

The petitioner, according to the averments made in the petition, has an unblemished record as a social worker. He was elected from this very constituency twice earlier, i. e. 1977-1982 and 1985-1990. He also held the post of the Chairman of the Forest Corporation from 1979 to 1982 and was also Deputy Speaker of the Himachal Pradesh Legislative Assembly in the year 1989-90. The petitioner was earlier in the Indian Navy for more than 8 years and he had exemplary character and was commended as a well disciplined individual.

Having left the Indian Navy, the petitioner joined the politics and was declared elected as President of the Gram Panchayat and he is further said to be a founder member of Zila Sainik Board Una, of which he remained a member till 1992. He also claims that he was the President of Rural Labour Cell INTUC from 1987 till date and also the State Chairman of essential Commodities and Cooperative Cell from January, 1993 till date. There has never been any blame on the character of the petitioner throughout his life and the allegations made by respondent No. 1 during the election are said to be wholly false.

In the written statement filed on behalf of respondent No. 1, the averments made in the petition have been denied as wrong. The account submitted is said to be true and within the permissible limit.

It is denied that an amount of Rs. 5,000/- was ever paid by respondent No. 1 to Shri Jogmohan Sharma for any purpose. The document is said to be forged one and is said to have been prepared in connivance with Jagmohan Sharma, who is a supporter of the petitioner. Respondent No. 1 never made any payment of Rs. 5,000/-, as alleged. It is said on behalf of respondent No. 1 in the reply that no amount exceeding the permissible limit was ever spent, as mentioned by the

petitioner in sub-paras (b) and (c) of para 10 of the petition and, thus there was no question of showing these items in the return. It is denied that respondent No.1 spent any amount in getting the writings on the banners as well as painting and slogans etc.

In respect of the use of the vehicles, it is said that the petitioner has mis-read the return. Vehicle No.HP-02-3593 was engaged for only one day and for no other period. Vehicle was never engaged from October 20, 1993 to November 9, 1993, as alleged. The names of the persons introduced by the petitioner in the petition, were only with a view of preparing a false evidence at a later stage and the said vehicles were not plied in the constituency between the dates alleged in the petition. Respondent No. 1 claims not to have committed any corrupt practice within the meaning of Section 123 (6) of the Representation of People Act.

In reply to para 11, the publication of the news item appearing in Uttam Hindu is denied for want of knowledge. The same was said to be before filing of the nomination papers and that respondent No. 1 has nothing to do with it. It has been said that it is wrong to suggest that the news item is defamatory or is absolutely false or amounts to character assassination of the petitioner.

It is denied that respondent No. 1 got photocopies of the news paper published or distributed it during the election campaign. None of his supporters or any other person ever distributed any photocopy of the news item in the constituency with his consent nor any part of it was made basis either to vote against the petitioner or to vote in favour of respondent No. 1. It is denied that respondent No. 1 personally distributed hand bills or got them distributed through the persons mentioned by the petitioner in the relevant paragraph. All these persons are said to be the supporters of the petitioner and have been introduced to create false evidence.

It is denied that the persons mentioned were travelling in vehicle No. HP-02-2677 or that respondent No.1 was carrying the material and distributing it to the electorate in the villages. The said material was never distributed by respondent No. 1 or by any other person with his consent in any villages referred to in the petition.

All incidents alleged to have taken place on November 6, 7 and 8, 1993 in respect of procession and distribution of material have been specifically denied and the persons mentioned for such distribution are said to be the supporters of the petitioner.

It is further denied that respondent No. 1 or any other person with his consent caused any publication of the alleged photocopies of the news item nor the same were distributed in any part of the constituency. The statement, according to respondent No. 1 does not even otherwise touch the personal character or conduct of the petitioner nor respondent No. 1 has committed any corrupt practice. It is denied that the petitioner suffered any loss because of the alleged incidents. According to respondent No. 1, he did nothing which could adversely affect the prospects of the petitioner or any calculated effort was made to improve his prospects.

In the rejoinder, the averments made in the written statement stand denied. It has been reiterated that respondent No. 1 has violated the provisions of the relevant law, as applicable and further the accounts submitted by respondent No. 1 are not true accounts. It is also denied that Jagmohan Sharma, the painter, is not a supporter of the petitioner, but is supporter of Bhartiya Janata Party. It is denied that there was any connivance between the petitioner and Jagmohan Sharma. The averments made in paras 10 and 11 have been specifically denied. It is also said that the persons mentioned in these paras have no concern with respondent No. 1. They are said to be active supporters of the Congress (I).

On the aforesaid pleadings of the parties, following issues were framed on May 20, 1994 and June 1, 1994 :

1. Whether the copies of the election petition supplied to respondent No. 1 do not depict the true contents of the original petition as envisaged under Section 81 of the Representation of People Act, 1951, if so, its effect ? OPR-1. (Note: As per order dated 1-6-1994, Section 81 is deemed to have been substituted for Section 83 of the Act).
1. (a) Whether the election petition lacks in material facts ? If so, its effect ? OPR-1
1. (b) Whether the affidavit and verification of the petition is not in accordance with the requirement under Section 83 (c) ? If so, its effect ? OPR-1.
2. Whether the election petition is liable to be dismissed for misjoinder of necessary parties as envisaged under Section 82 of the Representation of People Act, 1951 ? OPR-1
3. Whether the expenditure by respondent No. 1, Shri Ram Dass, exceeds the limit of Rs. 20,000/- as alleged in paras 10 (a) to 10 (f) ? OPP.
4. In case, issue No. 3 is decided in the affirmative, whether the expenditure beyond the limits and non disclosure thereof under section 86 of the Conduct of Election Rules, 1961 has materially affected the election of the petitioner and the same amounts to corrupt electoral practices having been committed by respondent No. 1 in terms of Section 123 (6) of the Representation of People Act, 1951 ? OPP.
5. Whether respondent No. 1 got published the pamphlets containing defamatory statements in respect of the personal character and conduct of the petitioner and distributed the pamphlets thereof as alleged in paras 11 (a) to 11 (g) of the Election Petition in terms of Section 123 (4) of the Representation of People Act, 1951 ? OPP.
6. Relief.

Issues No. 1, 1 (a), 1 (b) and 2 were treated as preliminary and stand disposed of *vide* order passed by this Court dated June 21, 1994.

Vide order, referred to above, it was held that the allegations, contained in paras 11 (a) to 11 (e), though elaborate, but the petitioner has not named the election agent or the workers of respondent No. 1 who helped him in the publication and distribution of these hand-bills nor there was anything in the pleadings that respondent No. 1 had given his consent to the distribution of such hand-bills by his party-workers or election agent. These averments were ordered to be struck off under Order 6, Rule 17 of the Code of Civil Procedure and this led to the filing of the amended petition.

The Court is now left to determine issues No. 3, 4 and 5 only. Issue No. 4 shall have to be touched only if issue No.3 is held in the affirmative.

The controversy, thus, left to be decided, can safely be put under two heads, the first being whether respondent No. 1 had exceeded the limit of Rs. 20,000/-, as said in paras 10 (a) to 10 (f) and the second point would be about the publication and distribution of a pamphlet containing defamatory statement in respect of the personal character and conduct of the petitioner, the details of which are given in para 11 of the petition.

It is here, at this stage, that the relevant provisions and non-compliance of which is alleged in the petition, are taken note of. It is said that the provisions contained in Section 77 read with Rule 90 and the Table attached thereto have not been complied with. The relevant extract of these provisions is re-produced hereunder :

“77. Account of election expenses and maximum thereof.—(1) Every candidate at any election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his election agent between (the date on which he has been nominated) and the date of declaration of the result thereof, both dates inclusive.

- (a)
 (b)
 (2)

(3) The total of the said expenditure shall not exceed such amount as may be prescribed.”

Rule.—“90. Maximum election expenses.—The total of the expenditure of which account is to be kept under section 77 and which is incurred or authorised in connection with an election in a State or Union territory mentioned in column 1 of the Table below shall not exceed —

- (a)
 (b) in any one assembly constituency of that State or Union territory, the amount specified in the corresponding column 3 of the said Table :—

TABLE

Name of the State or Union territory	Maximum limit of election expenses in any one	
	Parliamentary constituency	Assembly constituency
1	2	3
1. STATES	Rs.	Rs.
1.
2. to 5
6. Himachal Pradesh	..	20,000
7. to 22
II. UNION TERRITORIES :		
1. to 4”

The next provision, non-compliance whereof is alleged, is Section 123 sub-sections 4 and 6 which is dealt with under Chapter 7, relating to corrupt practices and electoral offences, the relevant extract is re-produced hereunder :

“123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

- (1)
 (2)
 (3)
 (4) The publication by a candidate or his agent or by any other person (with the consent of a candidate or his election agent), of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to

the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5)

(6) The incurring or authorising of expenditure in contravention of section 77."

The stage is now set to take notice of Section 100 of the Representation of People Act, 1951, which vests powers in the High Court to declare the election of the returned candidate to be void in case the grounds mentioned therein are pleaded and successfully proved. The Section reads as under :

"100. Grounds for declaring election to be void.—(1) Subject to the provisions of subsection (2) if (the High Court) is of opinion—

- (a) that on the date of his election a returned candidate was not qualified, or was disqualified to be chosen to fill the seat under the Constitution or this Act (or the Government of Union Territories Act, 1963 (20 of 1963)); or
- (b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or
- (c) that any nomination has been improperly rejected; or
- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected :—
 - (i) by the improper acceptance or any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate (by an agent other than his election agent), or
 - (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or
 - (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

(the High Court) shall declare the election of the returned candidate to be void.

(2) If in the opinion of (the High Court), a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but (the High Court) is satisfied—

- (a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and (without the consent), of the candidate or his election agent;
- (b)
- (c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and
- (d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then (the High Court) may decide that the election of the returned candidate is not void."

It is in the light of the aforesaid provisions that the pleadings, which have been referred to in detail in the earlier part of this judgement, have to be tested on the scrutiny of the material placed on record by the parties keeping in view the fundamental principles of the civil law and procedure relating to pleadings and proof.

The surviving issues are co-related and can be clubbed together for proper understanding of the matter and are, thus, taken up as such for the purposes of the decision.

The petitioner has examined 20 witnesses inclusive of himself, besides placing a number of documents on record, reference to which would be made herein after in this judgement. Respondent No. 1 has examined only himself to rebut the evidence placed by the petitioner on the record.

PW-1 is the petitioner himself. In his statement, he refers to the news item that appeared in Uttam Hindu dated September 22, 1993. Copy of this news item has been placed, as Ext-PW-1/A, on the record. It is stated by him that respondent No. 1 continuously used the two vehicles from October 20, 1993 till November 9, 1993. It is pertinent to make a mention here that he himself never saw the two vehicles plying in the constituency. As per his statement, the information was supplied to him by Tarlok Chand and Malkiat Singh, after the declaration of the result on December 31, 1993, at his residence. It is from these two persons that the petitioner came to know of the banners that were displayed on these vehicles as well as the loud-speakers that were fitted on each of the vehicle. The certified copy of the expenditure return filed by respondent No. 1 is Ext.PW-1/B. The petitioner has further stated that on November 28 and 29, 1993, Jagdish Chand, Dhani Ram, Mehar Chand, Atma Ram, Parmanand, Onkar Singh, Capt. Raghubir Singh, Bachan Singh and Bhag Chand came to him and informed that respondent No. 1 and his workers, namely, Sureshanand, Pawan Kumar and Bachitter Singh had distributed photocopies of the news item, Ext.PW-1/A, amongst the electorates in the entire constituency. These persons apprised him of the said distribution in various villages. According to the petitioner, when the rally was conducted on November 7, 1993, these persons distributed photocopies of the news-item in the evening and one such copy was brought to him and delivered by Malkiat Singh. He could not get the information as to place and person who prepared these copies. It is from these persons, who visited the petitioner after the declaration of the result, that he came to know about the happenings which were prejudicial to his interest in the election and he was informed that the expenses incurred by respondent No. 1 must be between Rs.40,000/- to Rs. 50,000/-. It is thereafter, this witness started investigation and came in contact of Jagmohan Sharma, a painter who had worked for respondent No. 1 in painting banners and writings slogans. According to the petitioner, he went to Amb on January 1, 1994 along with one Babu Ram, his cousin, and tried to solicit information from Jagmohan Sharma, who informed him that he had worked for respondent No. 1 and charged Rs. 15,000/- only and that too against receipts. The receipts in original were with Jagmohan Sharma and the same were taken from him on the pretext that these would be returned as and when required. The petitioner then compared the expenditure with these receipts and found that there was an excess in the expenditure incurred by respondent No. 1 and the payment has not been indicated in the return. It has been specifically denied that Jagmohan Sharma is a party worker of the petitioner and that he never worked in this election. The distribution of the news-item by way of photostat copies had adversely affected the prospects of the petitioner, as it amounted to his character assassination and these allegations are said to be false.

In cross-examination, it is said by him that the news-item Uttam Hindu is available in the District, but he does not contribute to it nor he reads it regularly. This news-item is said to have been brought to his notice by his brother at Shimla for the first time on September 23, 1993. No contradiction was issued. No steps were taken to contradict this news-item except that a suit is intended to be filed, for which notice has been given to the Editor. No complaint was lodged to any authority. Regarding the distribution, he states that it never came to his notice during the entire election campaign. The information, according to him, was disclosed by certain persons at his house on November 28, 1993 and on the other day when other persons visited him and apprised him of the facts disclosed in the examination-in-chief. These persons had come to apprise that there was a conspiracy, which was hatched to defeat him in the election. It is also said by him that respondent No. 1 was sitting in both the vehicles on

different occasions, but he could not give the exact date on which he was so seen. He admits that none of his workers prior to December 31, 1993 apprised him of the use of two vehicles by respondent No. 1. He personally never heard any announcement through the loud-speakers fitted on the vehicles nor any investigation was made as to from where these speakers were obtained and procured by him. He is unable to name the informant, who gave this information nor the date. No enquiry was made whether the photocopies were actually distributed in the villages and by whom and on what date. He also shows his ignorance about the name of the person who informed him that Jagmohan Sharma had worked for respondent No. 1 during the election campaign. No enquiry was made by him from Jagmohan Sharma about the places, houses or walls where the slogans had been written. He made no enquiry from Malkiat Singh, who, admittedly, is his supporter as to from where he got hand-bill marked 'C'. The same was folded before it was handed over to the petitioner.

PW-2, Shankar Singh, is Tehsildar Elections, Una, who brought the expenditure return and proved it as Ext.PW-2/A. Supporting vouchers have been proved by him as Exts.PW-2/A. 1 to Ext.PW-2/A.4 and affidavit Ext.PW-2/B. He admitted that respondent No. 1 applied for issuance of a permit in respect of vehicles No. HP-02-3593 as well as PGO-2342, both jeeps and the endorsement on the permit was made by him. Permission in this respect is Ext.PW-2/D.

PW-3 is Jagmohan Sharma, who deposed that he was introduced to respondent No. 1 by one Pawan Kumar on September 18, 1993. Rates were supplied in respect of the painting of slogans on the banners as well as on the walls. He charged Rs. 40/- per cloth banner and Rs. 5,000/- by way of advance were received by him against receipt. Ext.PW-3/A is the receipt dated October 18, 1993. He narrated the names of villages and other places where he was taken for the purposes of writing the slogans. He states to have worked for 9 or 10 days and prepared 125 cloth banners and the bill was finally settled on November 16, 1993, for a total amount of Rs. 15,000/-, including the advance already received. This payment is said to have been made by respondent No. 1 at his shop. The receipt, that was prepared, is Ext.PW-3/B. This witness did not know the petitioner earlier to January 1, 1994. Most surprisingly, this witness in his statement states that it was the petitioner who told him that he had worked to a great extent in the entire constituency and the work in terms of money must be varying between Rs. 40,000/- to Rs. 50,000/-, on which the witness replied that the work done is amounting to Rs. 15,000/- only. It was then the bills were shown, which were taken by the petitioner. He was assured that the receipts would be returned in 4-5 days, but were never returned. In cross-examination he admits that he has no bill-book at his shop and also does not keep any receipt-book. He does not maintain any accounts, though he states to be earning Rs. 3,000/- per month. He admits that there is no helper or servant or agent for carrying on business at his shop and he could not give the date of purchase nor the extent of each kind of material purchased in respect of painting and writing slogans. The cloth is said to have been purchased by his wife's sister's son. He admits to have paid Rs. 1500/- for the purchase of cloth. In respect of issuance of receipt to other customers, he admits that he did not issue to any one, as it was never demanded from him. He was unable to give the measurements of the banners. He paid to one Naresh Kumar, who helped him in preparing the banners at the rate of Rs. 90/- per day for four days. This witness was put to searching cross-examination and there have appeared on the surface a lot of contradictions, some of which have been noticed above. It is important to take notice when he says that nothing was written on Exts.PW-3/A and PW-3/B in the presence of the petitioner and these receipts had already been prepared prior to his visit. No revenue stamps is affixed. When put to confrontation about the language and the figures mentioned in the two receipts no satisfactory answer has been given.

PW-4, Parkash Chand, is doing a part time job of accountancy with various shop-keepers. According to him, several rallies were held in favour of respondent No. 1 at various places and the campaign was started on October 19, 1993. The statement made by this witness was seriously objected and he was given up as amended petition was necessitated.

PW-5 is Bachan Singh, who has retired from the Forest Department. He claims himself to be the supporter of the petitioner and according to him, on November 7, in the rally organised by the Bhartiya Janata Party, respondent No. 1 was present along with other supporters. There were slogans in distribution of literature. He, of course, did not see the literature, it was shown to him by some people. It was a news-item from the paper Uttam Hindu. He states to have met the petitioner after the declaration of the result on November 28 and 29 and informed him about the huge amount spent on the painting and writing the slogans on the walls in the constituency.

In cross-examination, he does not remember the name of the person who gave him the news-item. He had read the news in the paper on September 22, 1993 also. He never discussed or talked to the petitioner regarding the news-item and in his presence he did not notice any other person talking about the news-item. He met the petitioner on November 29. Several other persons were also present. When he enquired from the petitioner about the happening, he told him that the matter would be investigated.

PW-6 is Bhag Chand. He told the petitioner that cheap propaganda against him was going on and due to this he had lost. Sureshanand joined him in telling this. Nothing else has been stated by him and there is nothing in the cross-examination of this witness to take notice of.

PW-7 is Mangat Ram, who states that he was earlier in Bhartiya Janata Party and had now become the member of the congress party. He knows Sureshanand and Pawan Kumar as well as Bachittar Singh. According to this witness, they belong to Bhartiya Janata Party. He states that there was propaganda by way of wall writing and it was more of Bhartiya Janata Party. Nothing has been said by him in his entire statement, which could be of help in taking notice of covering the discussion under the two heads.

PW-8, Onkar Singh, has stated about the news-item published in Uttam Hindu and the distribution of its photo copies by respondent No. 1 and his friend Dr. Sureshanand. According to him, some people informed him about the distribution of the news-item. He met the petitioner after 2-3 days of the counting and informed him about the distribution of the news-item. In his cross-examination, he admits having read this news in the month of September, 1993, but never informed the petitioner about it nor to other persons. According to this witness, except in his village, in no other village, nobody informed him about the news-item. In respect of his village also, he does not remember who informed him. He has categorically admitted that he did not see respondent No. 1 or Sureshanand giving this news-item in his village.

PW-9 is Malkiat Singh, who knows respondent No. 1, Sureshanand, Pawan Kumar and Bachittar Singh. They used to come in jeeps fitted with loud-speakers and the canvassing was done that saved the ladies and girls in defeating the petitioner. He also states that these persons used to canvass that if there is a rape or murder, the petitioner gives the shelter to the culprits. Pamphlets were distributed by them and one such hand-bill was given to the petitioner by him. This amounted to character assassination of the petitioner. In cross-examination, he could not give the date on which the four persons met him. He has given the registration number of the two vehicles. He has also admitted that no car could go to his village and, therefore, he did not know whether the petitioner was using the car or jeep for this election campaign. He could not give the name of the person, who informed about the pamphlet. He has said to have taken the pamphlet from a child and he got it read over from his son. He did not keep any copy of the pamphlet and when put to identify which out of the two pamphlets was delivered to him, he said both look alike.

PW-10 is Raghubir Singh. He has stated that the petitioner has lost the election because of publication of the news-item, in Uttam Hindu. It was during the rally on November 7, that he had met some workers, who showed him the pamphlet. He informed the petitioner

about the news-item, who told him that he will be taking necessary action. In cross-examination, he states that the issue of the news-paper was shown to some persons 2 or 3 days after its publication. He did not remember the names of those persons. He does not remember the name of any party worker, who informed him that the pamphlet was distributed by the members of the rally in the Bazar.

PW-11, Tarlok Chand, claims to be an active member of the Congress (I) party and supported the petitioner during 1993 elections. As per his deposition, lot of wall writing was done by the Bhartiya Janata Party requesting the people to vote for the party. He further goes to say that he never saw such large number of painting in the election earlier. A large number of vehicles are said to have been used by the Bhartiya Janta Party for the purposes of election campaign. There were many vehicles including the two jeeps bearing No. 3593 and 4677. These jeeps carried banners and party flags and posters and were in use continuously from the date of nominations till the date of poll. He saw Pawan Kumar, Sureshanand and others moving in the jeeps and distributing the photocopies of the news-item. The persons who received the e hand-bills informed this witness that much damage has been caused to the prospects of the petitioner in the election. In the news-paper the petitioner was blamed for getting the transfer of Government employees and took money for it and was giving shelter to the murderers and rapists. The witness was shown Ext.PW-1/A and Ext.PW-9/1 and according to him, these were news-items and the photocopy of it. He met the petitioner on November 28 and 29 and again on December 30 and 31. Malkiat Singh also showed the photocopy of the news-item to the petitioner and information was supplied that there were distributed throughout the constituency.

In cross-examination, the witness admits that Congress (I) candidates were defeated in the adjoining constituencies Pragpur as well as Nadaunta, which is also adjoining. He, of course, did not see any person writing on the walls, although, he saw the wall paintings at different places mentioned by him. He was unable to give the numbers of other vehicles used by the Bhartiya Janata Party in the area. He was also unable to give the registration number of the vehicles which were used by the Congress (I) party for election campaign. According to him, respondent No. 1 and his workers met him in a tea-stall in village Jole. He is unable to give the date of the meeting. He was also unable to give the date on which he saw the two jeeps nor he would give the exact date of the news-paper. He read this news-item on September 23 and 24. He informed the petitioner about this this news-item, who replied that he was taking necessary legal action. No distribution of the photocopies of the news-item took place in his presence and it was reported to him by some other persons. The date or time, he was unable to answer. According to him, there were 4 or 5 persons, but he could not give their names when the informations was disclosed to the petitioner on the dates given by him.

PW-12 is Atma Ram, who is also a member of the Congress (I) party. According to him when he was returning from Jole on November 8, in the evening, he met respondent No. 1 in the company of Pawan Kumar, Sureshanand and others, who were distributing the pamphlets to the people. He returned to his house. One Onkar Singh gave him the information that photocopies have been distributed by these persons. One copy was brought by him and read over to him containing allegations against the petitioner. Another person came to him with a similar copy and thereafter, this witness went to Parmanand to supply the information about the distribution of pamphlet.

In cross-examination he admits that Congress (I) candidates from the adjoining constituencies of Chintpurni and Pragpur were also defeated and same was the case with the neighbouring constituency Nadaunta. He is said to have seen respondent No. 1 and others in a jeep on November 8, 1993. It was dark time. He could not give the names of the persons to whom the pamphlets were distributed. No copy was given to him nor he read it. He did not read the news-item, which was

published and nobody informed him about the publication of the news-item. After having come to know of it on November 8, the petitioner was informed only on November 28 and 29. Ext. PW-9/1 is said to be exactly similar. No information was supplied to the police about the distribution. The copy which was with him is said to have been destroyed by his wife while washing his clothes.

PW-13 is Mehar Chand, who was a member of the Smriti with respondent No. 1. He narrates the propaganda made by the Bhartiya Janta Party in assassinating the character of the petitioner. Two jeeps were seen by him near the shop of Mohinder Singh. There were slogan shouting from the jeep and pamphlets were distributed. Information was given by Mohinder Singh, who brought one pamphlet and read over the same to him. The distribution was done during the dark. He noticed Bachittar Singh and Ajit Singh amongst others, who were distributing this material. He also saw respondent No. 1 in the jeep. Mohinder Singh told this witness that this type of propaganda was bad. The witness met the petitioner on November 28 and 29 and according to him, the petitioner lost the election because of this publicity. In cross examination he could not give the names of the persons sitting in the Jeep. Respondent No. 1 is said to be in the Jeep. Ramji Dass, father-in-law of respondent No. 1, had contested one election against this witness. He informed about this incident to the petitioner only on November 28 and 29. He was unable to give the number of two jeeps.

PW-14, Dhani Ram, is also Congress (I) worker, who noticed the two Jeeps campaigning for the Bhartiya Janta Party. He saw Bachittar Singh and Pappi as well as respondent No. 1 distributing pamphlets. He recognised the pamphlet Ext. PW-9/1. The two jeeps are said to have left when the witness broadened the bus to his home. One Dr. Daljit Singh met this witness 2-3 days later and he also narrated the distribution of the pamphlets. This witness met the petitioner only after the declaration of the result on November 28/29 and informed about the cause of defeat in the distribution of the pamphlet. In cross-examination he was unable to give the registration number of both the Jeeps. He was unable to give the name of any person who had gathered or the person who gave him the pamphlet. No pamphlet was further given to him and it was given by some other person. He did not read the newspaper carrying the news-item. He only heard it. According to this witness, the publication and distribution of the news-item definitely affected the prospects of the petitioner in the election.

PW-15, Jagdish Sharma, is the General Secretary of the Block Congress Committee. He saw a vehicle with Bhartiya Janta Party's on November 6, 1993. He was sitting in the shop of one Durga Dass and saw that respondent No. 1, Bachittar Singh and Surendranand started distributing the printed matter. Durga Dass was asked to find out as to what was the literature. He brought a copy of it. On his way to village, he was also informed by one Ram Krishan that similar printed matter was distributed in the village. He met the petitioner on November 28 and 29 after the declaration of the result and informed him about the incident. In this cross-examination, he states that the defeat was on account of the propaganda which was made in the shape of the pamphlet. He claims to have read the newspaper report and informed the petitioner after 2-3 days of its publication. He also gave this information to one Raghubir Singh. He went to several houses for the purposes of campaigning, but nobody from those houses informed him about the pamphlet. He is unable to say as to from whom Durga Dass got the pamphlet. People told him that they would not vote for the petitioner after seeing the pamphlet. Information about this was supplied to the petitioner after 2-3 days of the election. According to him, 10-20 persons were there with the petitioner, but he was unable to give the name of any person.

PW-16 is Parma Nand, who runs a shop in village Jol. According to him, respondent No. 1 made propaganda of character assassination of the petitioner on charges of corruption. Photocopies of the news-item were distributed in the people on November 8, in the evening and he saw respondent No. 1 getting down from the Jeep along with his workers and distributing it to the people. He went home. He is a member of Congress party and did not care to read what was being distributed. One Atar Ram went to his village and showed him one copy. He also saw the distribution of pamphlet at Harsa Chowk in village Jol. Election was to be held on the next date and no

steps could be taken. He gave this information to the petitioner and advised him to file a writ petition. In cross-examination he admits that the said news-paper was not in circulation in the village and he saw the photocopy of the news-item for the first time on November 8. 8-10 persons were present, when the pamphlet was distributed. He could not give the names of persons who distributed the pamphlet. He was polling agent of the petitioner. This witness did not meet the petitioner from November 9 to 27, 1993. Information was supplied by him to the petitioner on November 28, when he was in the company of Atma Ram. Both these persons conveyed their reaction to the petitioner. 40-50 persons were with the petitioner at that time, but he could not give the name of any of these persons. Atma Ram told him that he had lost the election because of the pamphlet.

The next witness is Om Parkash, PW-17, who brought the record in respect of the procession and rallies, which is Ext. PW-17/1.

PW-18, Laxmi Chand, a clerk of this Court brought the record of Civil Suit filed by the petitioner against Mr. Irwin Channi and Mr. O. P. Dhiman claiming damages for defamation.

PW-19 is Dinesh Kumar, the owner and driver of taxi bearing No. HP-02-3593. This Jeep was hired by Vijay Kumar for the purposes of election, on November 9, 1993. Vijay Kumar along with 3-4 persons used that vehicle and they returned in the evening. Rs. 400/- were charged for that date and the payment was made by respondent No. 1 and Vijay Kumar. Receipt Ext. PW-2/A was issued by him and was written by some one else. In cross-examination he stated that the vehicle was used only for one day and Rs. 400/- were received. He specifically stated that the vehicle was not used on any other date.

PW-20 is Rajinder Singh, owner and driver of (taxi) Jeep bearing No. 2677. He had also engaged one Ranjit Singh to drive the jeep for some days. According to this witness, the jeep was engaged for Rs. 400/- per day and payment was received from Pawan Kumar. Receipt is Ext. PW-2/A-1. The vehicle was used by the party for about 20-21 days. The vehicle, according to this witness, was not used on November 9, 1993, anywhere, and was at Bangana. In cross-examination, he specifically stated that the vehicle was used from October 20, 1993 till November 9, 1993 and payment of Rs. 8,000/- was received at the rate of Rs. 400/- per day. He further stated that respondent No. 1 never distributed any pamphlet or any other material regarding electioneering, when the vehicle was driven by him.

The last witness who appeared for the petitioner is Parkash Chand, who had earlier put in his appearance as PW-4, but his statement could not be completed. He conducted the election rallies of respondent No. 1, but does not know, who made the expenditure in the election campaign. He saw Jagmohan of Amb doing painting work for one day. This is all what he said in the examination-in-chief. In cross-examination, he is unable to give the date when he saw Jagmohan doing the painting work. He denied the suggestion that Sureshanand, Bachittar Singh and Pawan Kumar are not the active members of the party.

Respondent No. 1, Ram Dass, appeared as RW-1 and denied having made publication or printing or hand-bills. No wall writing was got done by him nor he knows Jagmohan Sharma. Objection was taken that questions have been put to this witness in the leading from, but the objection was over ruled. Even if, these questions are not looked, in his statement, he has given all the details of the campaign. He engaged only one vehicle bearing No. 2677 and the same was hired at the rate of Rs. 400/- per day. He came to know of the news-item, Ext. PW-1/A, when he received notice from this Court along with election petition. No one sought his permission to get the document photostat nor he gave consent for this. In cross-examination searching questions were put in respect of his joining the party and about the persons connected with the party. In respect of the matters covered by the issues, he stated that the return of the election expenses, Ext. PW-2/A, was not in his hand writing and he got it filled up by some one. After carefully

scrutinizing the entire statement, nothing could be taken out from this witness to advance the case of the petitioner. He specifically denied having distributed hand-bills and according to him, the election expenses reflects the true and correct accounts of the amount spent by him. He denied having paid Rs. 5,000/- to the painter as advance and Rs. 10,000/- towards the final payment. He totally denied having met or known the said painter, Jagmohan Sharma. One vehicle, according to him, was engaged from October 20, 1993 to November 9, 1993 and the other vehicle was engaged only for one day, i.e., on the day of polling. He admits that against item No. 22 of the return, both the vehicles are mentioned, but in fact only one was used for the given period and the other was engaged for the date of the polling. Vehicle No. 2677 remained with him. No banners, flags or loud-speakers were fitted on it. He was unable to give the names of the persons accompanying him each day nor he could give the names of the villages where the vehicle was taken to Rs. 8,000/- were paid in respect of vehicle bearing No. 2677 and Rs. 400/- were paid in respect of vehicle bearing No. 3593. Rally held on November 7, 1993 was organised for him by his workers. He denied that photocopies of Ext.PW-9/1 were handed over by him to Sureshanand, Pawan Kumar and Bachittar Singh, in the rally held on that date. He never read the news-item of Uttam Hindu, dated September 22, 1993. He does not know about the talk of corruption regarding the petitioner in his constituency. The lines encircled in red on Ext. PW-1/A are said to be correct. He was, however, unable to admit or deny the contents as true or false. He never circulated the photocopies after underlining.

This is the total oral evidence placed on record by the parties. Reference shall now be made to the documents placed on record by the parties.

Ext. PW-1/B is the return of the election expenses. At page 3 of this return, against item No. 22 regarding hiring charges of vehicles, two vehicles have been given bearing No. 2677 and 3593. The name of respondents No. 1 is given against column No. 4 who made the payment of Rs. 8,000/- and in column No. 6, dates for which these vehicles are said to have been used are given, i.e., from October 20, 1993 to November 9, 1993. On the first page, under the head mobile expenditure, Rs. 8,000/- have been given for the use of the vehicle bearing No. 2677 from October 20, 1993 to November 9, 1993. Again, against the date November 9, 1993, one vehicle taken on contract is mentioned and Rs. 400/- are said to have been paid for vehicle bearing No. 3593. At page 4, at the end, the receipts in respect of the payment of both these vehicles have been said to be enclosed separately. This is a material document on which reliance is placed by the petitioner to project that in fact both these vehicles had been engaged for the period October 20, 1993 to November 9, 1993, but payment is reflected in respect of only one vehicle. The account, thus, submitted is said to be false and incorrect.

Ext. PW-3/A is the receipt dated October 18, 1993 written by Jagmohan Sharma for having received Rs. 5,000/- from respondent No. 1, as advance for the purposes of wall-paintings and banners. Ext. PW-3/B is the second receipt executed by Jagmohan Sharma, PW-3, and is dated November 16, 1993. This is in respect of Rs. 15,000/-, which were received for the work done on the walls and for the preparation of banners. A note is given on this receipt that Rs. 5,000/- have already been received, as advance on October 18, 1993 and Rs. 10,000/- have been received in cash, which was the balance. These are also important documents, on the basis of which it is alleged by the petitioner that this amount has not been reflected by respondent No. 1 in his return.

The next important document is the news-paper, Ext. PW-1/A, from Uttam Hindu, dated September 22, 1993. It is this news-paper, the photocopies of which are said to have been circulated and distributed in large number on November 6, 7 and 8, 1993. After having given the political scenario on respect of the constituency of Kulehar and after giving the chances of different candidates and parties, it is said that as per information received, people were discussing about the allegations that Ram Nath Sharma had collected money in lieu of transfer of employees and had also given shelter to the accused persons involved in the murder and rape cases. Relevant extract in Hindi script reads as under :

“मिली जानकारी के मुताबिक श्री राम नाथ पर कर्मचारियों के तबादलों पर पैसा बढ़ाने कुटलहूड विधान सभा क्षेत्र में हुए कत्ल, बलात्कार के कसों के मुर्जमों को पनाह देने की बातों को लोगों के बीच चर्चा का विषय बनी रही।”

Ext. PW-1/1 is the photocopy of this news- item. Ext. PW-2A/1 and Ext. PW-2A/2 are the original receipts in respect of the payment of amount for taxi charges. In receipt Ext. PW-2A/1, it is said that Rs. 8,000/- have been received from Ram Dass Malangar, as charges for the use of vehicle bearing No. 2677 from October 20, 1993 to November 9, 1993. In the receipt Ext. PW-2A/2, Rs. 400/- are said to have been received for the use of the vehicle for one day, which bears No. 3593. The first receipt includes the charges of the mobile spent on it. Ext. PW-2/ D-1 is the sanction of the permit in respect of vehicles bearing No. 3593 and 2342.

Besides this, there are several other documents consisting of the letters received from the Election Commission, forms, appointing counting agents and polling agents and these need not be taken notice of as the same are wholly irrelevant for the purposes of the decision of the matter in controversy.

From the side of respondent No. 1, there is Ext. R-1, which is a photo-copy of the election petition along with its annexures.

This is the total evidence oral as well as documentary forming the record of the present case.

It is argued by the learned Counsel appearing for the petitioner, Mr. D.D. Sood, that an amount of Rs. 8,400/- is shown in the expenditure having been incurred on the vehicles, which were hired by respondent No. 1. There are two undated receipts in support of the claim. According to learned Counsel, Rule 86 enjoins that while giving account of the election expenditure, particulars in respect of every item and day to day activities are required to be disclosed and these particulars have not been disclosed in the return. According to the learned Counsel, in the return both these vehicles are shown to have been hired from October 20, 1993 to November 9, 1993. An amount of Rs. 8,000/- is said to have been paid in respect of vehicle No. 2677 and Rs. 400/- only were paid for vehicle No. 3593. The argument is that when both these vehicles were used right from October 20, 1993 to November 9, 1993, both days inclusive, respondent No. 1, as contravened the provisions of Section 77 of the Act when read with Rule 90 and it amounts to corrupt practice within the meaning of section 123 (6) of the Representation of People Act. Reference has been made to the details given by the petitioner in paras 10 (a) to 10 (f).

Learned counsel further proceeds to submit that respondent No. 1 has spent an amount in excess of Rs. 20,000/-, which is the prescribed limit under the Rules. Rs. 15,000/- were paid by respondent No. 1 to Jagmohan Sharma of Sharma Arts, Mubarakpur road, Amb, for the purposes of painting and writing of slogans and appeals on the walls as well as on the banners. Rs. 5,000/- have been proved to have been paid to and received by Jagmohan Sharma on October 18, 1993 for which the receipt in original has been placed on record and second receipt is in respect of receiving the balance, i.e., Rs. 10,000/- on November 16, 1993, for which a separate receipt was executed and has been placed on record. This amount, according to the learned Counsel, has not been reflected in the return and, thus the statement of accounts does not reflect the true and correct picture and the petition is liable to be accepted and election has to be declared as invalid.

The second limb of the argument raised by Mr. Sood is that respondent No. 1 made statement in relation to the personal character and conduct of the petitioner, which statement was wholly false and unreasonable and was further aimed to prejudice the prospects of the petitioner. An appeal is said to have been made by respondent No. 1, on the basis of such character assassination asking the people to vote for respondent No. 1. It is, in this background, that the news-item dated September 22, 1993 published in the Utam Hindu, a Hindi daily publication from Jalandhar that becomes important.

Reference has already been made above, about the contents of the news-item and according to the learned Counsel, a reading of the news-item on the face of it shows that the same was defamatory besides being false. There was no factual basis on the basis of which the said statement was made and thousands of photocopies of this news-item were published and distributed on November 6, 7 and 8, 1993 by respondent No.1 personally alongwith Pawan Kumar, Bachittar Singh, Jagjit Singh and Sureshanand. The photocopies of this news-item in thousands, are said to have been distributed almost in the entire constituency of kutlehar during the evening hours of November 6, 7 and 8, 1993.

Learned Counsel is at pains to argue that during the procession which was organised by the Bhartiya Janta Party at Bangana on November 7, 1993, processionists distributed this material on the entire route and this material was carried and distributed with the consent and authority of respondent No. 1, who himself distributed it at several other places in the company of these persons from the jeep which was used for the purposes of campaigning. This act and conduct on the part of respondent No.1 in the publication and distribution of the material is claimed to be a corrupt practice within the meaning of the provisions contained in section 123 (4) of the Representation of People Act.

It is argued that irreparable loss and damage has been caused to the petitioner and to his reputation in the eyes of the electorate and his image was lowered ultimately resulting in his defeat. These allegations are said to be false and without any basis.

The learned Counsel has referred in detail to the statements of the witnesses, who had seen respondent No. 1 and his associates distributing this material in the public and the petitioner is said to have proved the allegations made in his petition beyond any doubt.

It is stressed that the petitioner while appearing as PW-1 has given the true and correct picture in respect of the use of the two vehicles right from October 20, 1993 till the date election was held. It is argued that the petitioner had fully proved that Pawan Kumar, Bachittar Singh and Sureshanand were distributing the literature in the form of hand-bills and there was huge display of wall paintings and banners. On enquiry made by the petitioner, he came in contact with Jagmohan Sharma, the painter, who informed him that he had charged an amount of Rs. 15,000/- from respondent No. 1 for writing slogans on the walls and also on the banners.

The amount having been spent in excess of the prescribed limit stands proved from the statement of Jagmohan Sharma, who has been examined as PW-3, who said that the receipts were prepared and were offered, but respondent No. 1 told him that the same would be collected later. He was accompanied at the relevant time by Pawan Kumar. After adjustment of Rs. 5,000/- paid earlier by way of advance, the remaining amount of Rs. 10,000/- were received in cash and the two receipts reflecting these payments stand proved on record.

Learned Counsel, Mr. Sood, contends that inspite of searching cross-examination, no material contradictions could be brought out in the statement of the petitioner. It is said to be the direct evidence which shows that the accounts were not truly and correctly reflected and exceeded the limit. My attention has also been brought to the provisions of Section 142 of the Evidence Act to project that leading questions were put and were over ruled. Leading questions, according to the learned Counsel, are forbidden to be put during examination-in-chief and the idea was to instruct the witness to answer the questions in a particular way. While dealing with this part of the evidence. I have already observed that even if these questions are ignored, the witness had given the entire details in the later part of the statement.

It is also contended that the affidavit filed by respondent No. 1 alongwith the return is not correct and is contrary to his statement made on oath, as witness.

No log book of the vehicles or any other record pertaining to expenditure has been explained. The permit was in respect of the two vehicles and there was evidence that three vehicles were used on the election date. There was no permit in respect of vehicle bearing No. HP 02-2677.

It is further contended that full particulars, as required by law, have not been detailed in the annexures and proformas issued by the Election Commission. In the return, against items No. 2 to 7, the words that appeared are, "not known." Same was the position in respect of items No. 9 to 21, 23 and 24. Respondent No. 1 while making statement in Court had stated that it was Jagat Ram, who incurred these expenses, but he has not been produced.

It is forcefully contended that the distribution of the hand-bills in such a large number and by the supporters of respondent No. 1 in his company straight way means that it was so distributed with his consent and active connivance. In case the amount given to Jagmohan Sharma in respect of painting and writing on the walls is included, it exceeds the prescribed limit of Rs. 20,000/-. Reference has also been made to the judgement reported in **A.I.R. 1970 S.C. 1477**.

The material was distributed on November 6, 7 and 8, 1993, immediately close to the date of the poll so that the mischief played is not detected. A reading of the hand-bills straight way under-mined the image of the petitioner and amounted to vilification campaign against him and his character. The petitioner is said to have already instituted a suit against the Editor and Printer of the news-paper, i.e., Uttam Hindu and the said suit was filed in this Court and now stands transferred to the District Judge, Una, as per value for the purposes of court fee and jurisdiction.

The material that was distributed on November 6, 1993 stands proved from the statements of PW-13, Mehar Chand, PW-14, Dhani Ram and PW-15, Jagdish Chand. All of them personally saw respondent No. 1 alongwith Bachittar Singh, Sureshanand and Pawan Kumar amongst others distributing the offending material, i.e., Ext. PW-1/A. All these persons were travelling together in a jeep.

In respect of the distribution of the material on November 8, 1993, my attention has been drawn to the statements of PW-8, Onkar Singh, PW-12, Atma Ram and PW-16, Parmanand.

It is contended that there was no evidence placed on record to show that the offending material relating to the character assassination of the petitioner was either true or respondent No. 1 believed it to be true and was used against the petitioner. Learned Counsel has cited number of case law to supplement his arguments, which are, **1992-II-Punjab Law Reporter, 12, 1994-Supp.III S.C.C.170, A.I.R.1961 Mysore 106, A.I.R.1961 Rajasthan 122, A.I.R.1964 Rajasthan 184, A.I.R. 1963, Madhya Pradesh 306, A.I.R. 1960 S.C. 1217, A.I.R.1962 S.C. 1156, A.I.R. 1965 S.C. 677 and 678, A.I.R.1967 S.C. 808, 1994 Suppl.II S.C.C. 446 and 1994-I S.C.C. 682**.

Mr. S. P. Jain, learned Counsel appearing for respondent No. 1, in reply to the arguments advanced by Mr. Sood has, stated that the return containing the election expenses submitted by respondent No. 1, is absolutely true and correct and not a penny has been spent beyond the prescribed limit of Rs. 20,000/-. It is argued that the allegations that respondent No. 1 paid Rs. 15,000/- to Jagmohan Sharma, the painter, are completely false. No amount was paid to this person and, therefore, the same could not be reflected in the accounts. It is also argued that Jagmohan Sharma has obliged the petitioner for some under hand deal and the said person was not even known to respondent No. 1.

It is further submitted that on reading the two receipts, i.e., Ext. PW-3/A and Ext. PW-3/B, together, it can safely be arrived at that the receipts are the handy-work of some mischievous

act and cannot be relied upon. When receipt Ext.PW-3/B, dated November 16, 1993, pertaining to the amount of Rs. 15,000/- was there, was no necessity of the other receipt in respect of the advance of Rs.5,000/-. It is submitted that after preparing the receipt, a note has been put at the end in respect of Rs. 5,000/- received earlier. The argument is that the painter had stated in his statement that normally he does not issue receipt unless asked for. There is nothing on record to suggest that the receipts were prepared on the asking of respondent No. 1. Now the original were passed on to the petitioner by the painter, speaks for itself about the connivance.

Mr. Jain further forcefully contends that the allegations that the two vehicles were used continuously for the period starting from October 20, 1993 to November 9, 1993, were incorrect as respondent No. 1 had stated at page one of the return about the use of the two vehicles, one for the given period and the other for one day only, i.e., the date of the poll. Rs. 8,000/- are reflected in the return to have been paid in respect of vehicle bearing registration No. 2677 and Rs. 400/- were paid and duly reflected in respect of the other vehicle bearing No. 3593. It is argued that at page three of the return, an impression is caused as in both the vehicles were used on the given dates, but the same stood well explained by respondent No. 1 in his statement as well as from the receipts, which form part of the return in respect of the payment to these two vehicles.

My attention has also been drawn to the statements of PW-19 and PW-20, owners-cum-drivers of these two vehicles, who have explained the amount received in respect of each of these vehicles and on the dates submitted by respondent No. 1 in his return.

Replying to the printing, publication and photocopies and its distribution to the electorates in the constituency Mr. Jain submits that the news-item appeared in Hindi daily, Uttam Hindu dated September 22, 1993. Even nominations had not been filed by then and pre-poll assessment was made by the Reporter and chances of different candidates getting the ticket and their chances of getting elected. No publisher or correspondent or reporter, has been impleaded in this petition and no contradiction was ever made by the petitioner right from the publication of the news till date. The argument of Mr. Jain proceeds on the basis that in case the news is false and is further defamatory, there is a cause for the petitioner to agitate against the editor and publisher of the said news-paper and not against respondent No. 1. The defamation already stood caused to the petitioner way back on September 22, 1993 and the circulation of this news by way of photocopies, which are alleged to have been distributed, would not cause to amount to any defamation or corrupt practice on the part of respondent No.1.

It is urged that there was no piece of evidence placed on record to prove as to how many copies of the news-item were got photostat and from whom and on what date. There was, thus, lack of material particulars which were essential to be given in the petition and this lapse alone is enough for the dismissal of the election petition.

Regarding distribution, the contention is that not a single witness has been examined from the side of the petitioner to depose that the pamphlets or hand-bills were given in his hands and by whom. The allegations were of general type and based on hear-say. No importance could be attached to the statements of that kind.

Learned counsel contends that the proof that is required in an election petition, to prove the allegations, is like a criminal trial. A fool proof case has to be proved beyond any doubt and respondent No. 1, having been duly elected by the electorate, their will should not be lightly interfered with on such type of weak evidence.

Learned counsel in order to support his submissions, in reply, has relied upon the following case law :

- A.I.R. 1981 SC 8;
- A.I.R. 1977 SC 208, 587 and 813;
- A.I.R. 1975 SC 208; and
- A.I.R. 1971 SC 1295;

The scope of the provisions contained in section 123 (4) and 123 (6) of the Act, under which the relief is being sought in this petition, has been examined in several judgements and has been interpreted from time to time. Some judgements have been cited by the parties. The judgement need not be burdened with all the case law cited at the Bar. It would suffice if some of those judgements are kept in view for deciding the controversy involved in the present petition.

In the judgement reported in 1994 Supp. (3) SCC 170, (**C. Narayanaswamy vs. C. K. Jaffer Sharief and others**), while interpreting the requirement of Section 83 (1) (i) of the Act, it has been ruled that full particulars of corrupt practice have to be set up as required by the said provision and merely quoting and pleading the provision of Section 123 (1) (A) would not amount to a statement of material facts or would not suffice setting forth the full particulars of corrupt practice. In paragraph 24 of this judgement their Lordships of the Supreme Court have held that it is the requirement of sub-section (1) of Section 77 that the candidate at election is required to keep a separate and correct account of all expenditure in connection with the election. The scope of the explanation added to this section which is in the form of a provision has also been explained. It has been held that initially on us is on the election petitioner to satisfy the Court on the basis of the material produced by him that the candidate concerned has incurred the expenditure in excess of the limit fixed by Rule 90 and if the expenditure has been incurred by the candidate or by his authorised agent, in view of the provisions, the onus would shift that the excess amount has been incurred either by a political party or by any other association or body of persons or by an individual other than the candidate or his election agent.

In the judgement reported in AIR 1961 Mysore 106 (**Sangappa Andanappa vs. Shivamurthiswamy Siddappalyaswamy**), the provisions of sections 78 and 123 (6) of the Representation of People Act were examined in respect of corrupt practice of incurring election expenses above the prescribed limit. It has been held in the judgement, under Section 78 all that a candidate, whose election is impugned, has to do, is to produce only true copy of the election account kept by him. The burden of establishing that any excessive expenditure was incurred, is entirely upon the petitioner challenging the election. It has thus to be established that the expenses exceeded the prescribed limit and only in that situation it would make out a corrupt practice as required under clause (6) of Section 123 of the Act.

In paragraph 86 of the judgement, the scope of clause (4) of section 123 of the Act was examined and after referring to the relevant provisions, certain tests have been laid down in paragraph 88 that read as follows :

- “1. It should be shown that both, the person who traduced or on whose behalf the traducement was made and the person who traduced were both candidates at the relevant time. The false statements forming the subject-matter of the corrupt practice should have been directed against a person who was a candidate.
2. The impugned statement should be shown to be statements of facts.
3. The falsity of those statements should also be established.
4. It should further be established that the traducer believed those statements to be false or did not believe them to be true.
5. The statements disseminated should relate to the personal character or conduct of the candidate, or to his candidature, or withdrawal or retirement from contest.
6. The statements should be established to have been reasonably calculated to prejudice the prospects of the adversary's election”.

In para 92, one more test has been laid down and that is to find the person who published those false statements, who believed those statements to be false or did not believe them to be true.

In paragraph 111, the words, "personal character or conduct" were examined and it was held that the character of a person may ordinarily be equated with his mental or moral nature. In the latter part of this judgement, some principles were laid down governing the interpretation of clause (4) of section 123. The question that is to be examined, is that when it is alleged that any statement derogatory to the personal character or conduct of an adversary candidate is published, whether that publication is about his public conduct or whether that publication is an attack on the honour, veracity and purity of the man beneath the politician.

After examining the publication in that case, it was found that the publication was not a publication in respect of the personal conduct or character of the respondent, but only a criticism of his public conduct and not of the man underneath the politician. criticism of his public conduct and not of the man underneath the politician.

In the judgment reported in (1992) 2 PLR. 12 (Capt. Chanan Singh Sidhu vs. Election Commission of India and others), the question that was being examined, has no relevancy to the present case. It was the provisions contained in Section 10-A of the Act that were being examined and in that case the petitioner was disqualified by the Election Commission as he had not submitted the accounts of the election expenses in the prescribed manner.

In another judgement given by the Hon'ble Supreme Court and reported in AIR 1967 SC 808, (Kumara Nand vs. Brijmohan Lal Sharma), the scope in respect of burden of proof under Section 123 (4) of the Act was examined. It was ruled that once it is proved and the complaining candidate has sworn that the candidate publishing the statement believed it to be false or did not believe it to be true, the burden would shift to the candidate making false statement of fact to show what his belief was. The further question as to the prejudice the prospects of the election is generally a matter of inference to be arrived at by the Tribunal on the facts and circumstances of each case.

In the judgement reported in AIR 1964 Rajasthan 184, (Badri Prasad vs. Satish Kumar Sharma), the provisions contained in Section 123 (4) of the Act were examined in respect of the personal character and conduct and allegations of distribution of material consisting of coats and blankets to voters. While examining the document published in that case, it was held that where a document published by a successful candidate intended to convey and was bound to convey to an average voter that the petitioner has been responsible for either misappropriating the amount of a particular fund or utilising it for a different purpose including the objectionable purposes for purchasing votes with that fund, there is a suggestion of embezzlement and also commission of corrupt practice and the document, therefore, contains a statement in relation to the personal character or conduct of the petitioner. On the facts and circumstances of the case, it was held that the petitioner there had established, *prima facie* case and in the situation, the burden shifted on the respondent to dislodge the assertions made by the petitioner. It was also held that no hard and fast rules can be laid down in this behalf. It was in the given situation of that case that the Division Bench allowed the appeal and set aside the election of the respondent in the background of concealment of account in filing the return.

In a case reported in AIR 1965 SC 677, (Sheopal Singh vs. Ram Pratap), the Lordships of the Supreme Court had the occasion to interpret the provisions of Section 123 (4) and its requirements as well as the question of burden of proof. In paras 5 to 11 of the said judgement, after examining the poster, it was opined that it amounted to a direct reflection of personal character of Ramchander Chowdhary. It was held that any statement made, which reflects on the mental or moral character of a person is a reflection on his personal character, whereas any criticism of a person's political or public activities and policies is outside it. It is a question of fact in each case under what category a particular statement falls. It was also held that mens rea is a necessary ingredient of corrupt practice and the person who publishes the statement, whether he is the author of it or not, does not commit a corrupt practice unless he has a requisite knowledge. The sub-section does not accept the doctrine of constructive knowledge.

In the judgment delivered by the Bench of Madhya Pradesh High Court reported in AIR 1963 Madhya Pradesh 306, (**Khubchand Baghel vs. Vidyacharan Shukla**), the provisions and scope of Section 123 (4) of the Act were examined with reference to political character or public conduct as well as personal character of the candidate. In para 21 certain tests were laid down. It was also held that no Tribunal or Appellate Court should, in the absence of very strong reasons, interfere with the result of any election. The principle was laid down as the Courts have to deal with elections where votes of thousands of electors are recorded and they have exercised their choice, which is presumed to be free and fair.

In AIR 1960 SC 1217, (**Sheopat Singh vs. Harish Chandra and another**), the Hon'ble Court was examining numerous instances of corrupt practice by agents that voters were carried by mechanically propelled vehicles which implied consent of the appellant in that case. It was in the given facts of the case that it was held that the appellant in that case must have consented to them. The inference that was drawn was one of fact by the High Court and the Hon'ble Court ruled that it would not disturb it.

In a recent judgment reported as 1994 Supp. (2) SCC 446, (**Subhash Desai vs. Sharad J. Rao and others**), corrupt practice and ingredients and object of Section 123 (4) of the Act were examined. It was held that the initial burden is on the election-petitioner and once he proves that the statement was made believing it to be false or not true, the same would be discharged by swearing to that effect, onus thereafter would shift on the candidate who published the statement while interpreting the provisions and examining the object in para 24 of the judgment, it was held that the provision is aimed to protect any candidate at the election from character assassination and vilification but, also to maintain the purity and fairness of the election. It would be better to reproduce this para hereunder :

"24. The object of sub-section (4) of Section 123 is not only to protect any candidate at the election from character assassination and vilification, but to maintain the purity and fairness of the election. The framers of the Act were conscious of the fact that some candidate or his agent or persons on his behalf, may publish facts in respect of the personal character of the candidate concerned, which are false, with an object to malign such candidate in public during the election in order to affect his prospect at the election. The momentum, the mood and the emotional upsurge during the elections are well-known and even small things which in normal times may not assume much significance, have serious consequences during the election and affect the minds of the electors and in some cases may be a decisive factor, to seal the fate of one candidate or the other. Sub-section (4) of Section 123 maintains the delicate balance between the freedom of speech of an individual, the interest of the public to get full information about the candidate concerned, but not to affect the prospect of the candidate concerned by publishing facts about his personal character or conduct which are false."

In para 25 of the above said judgment, the charge of corrupt practice was held to be quasi-criminal in nature and had to be proved to the satisfaction of the Court by the election-petitioner.

In (1994) 1 SCC 682, (**Gadakh Yashwantrao Kankarrao vs. E.V. alias Balasaheb Vikhe Tatil and others**), the provisions in respect of corrupt practice as required by the ingredients of Section 123 (4) were again examined. The burden is sought to be discharged by mere assertion or oath and onus thereafter will shift on the opposite side. What is false statement of fact against a candidate and what is a statement of fact, were minutely examined and it was held that expression of mere apprehension having no reasonable likelihood of any impact on the mind of voters, would not attract Section 123 (4) of the Act. It was further held that a pragmatic test is to examine whether the meaning given to the expression 'statement of fact' is capable of satisfying the other requirements of the provision. It is only that meaning of this expression which

is capable of satisfying the other requirements of the provision which can be its true meaning in the context. 'Statement of fact' can be proved to be 'false' only if it relates to an event which has happened and not to a hypothetical future possibilities. Similarly, the belief of the maker about its falsity or lack of belief in its truth relates to an existing fact. On the facts, it was held that the requirement of Section 123 (4) stands satisfied and the false statement of fact in respect of personal character and conduct of the candidate amounted to corrupt practice under the said provision. The scope of Section 123 (6) of the Act was also examined in respect of incurring the expenses exceeding the limit prescribed under the Act.

In the judgment reported in AIR 1971 SC 1295, (**Magraj Patodia vs. R. K. Birla and others**), finding of corrupt practice have been held by way of finding of fact. In para 16, while examining the provisions of Section 123 (6), it was held that in order to prove corrupt practice of incurring expenditure beyond the prescribed limit, it is not sufficient for the petitioner to prove merely that the expenditure more than the prescribed limit had been incurred in connection with the election. He must go further and prove that the excess expenditure was incurred with the consent or under the authority of the returned candidate or his election agent.

In AIR 1981 SC 8, (**N. C. Zeliang vs. Aju Newmai and others**), their Lordships of the Hon'ble Supreme Court laid down the nature of proof that is required to prove the charge of corrupt practice under Section 123 of the Act. It was held that a charge under Section 123 of the Act must be proved by clear and cogent evidence as a charge for a criminal offence. It is open to the Court to hold that a charge of corrupt practice is proved merely on preponderance of probabilities but it must be satisfied that there is evidence to prove the charge beyond reasonable doubt.

It is to be kept in view that the system of election in a democratic country like India has become extremely expensive and no election of a candidate has to be declared invalid nor the process has to be set at naught ordering fresh election. Such type of course is to be adopted only when the allegation of corrupt practice is conclusively proved.

There are three judgments in the report AIR 1977 SC 208, (**M. Narayana Rao vs. G. Venkata Reddy and others**); 587, (**Lakshmi Raman Acharya vs. Chandan Singh and others**); and 813, (**Amolak Chand Chhazad vs. Bhagwandas Arya (dead) and another**).

In the judgment appearing at page 208, principles of law in respect of charge of corrupt practice have been laid down. It has been ruled that the charges of commission of corrupt practice have to be proved and established beyond doubt like criminal charge or a quasi-judicial charge but not exactly in the manner or establishment of guilt in a criminal prosecution giving the liberty to the accused to keep mum. It was further held that the results are declared on the choice of voters and should not be lightly interfered with or set aside. In ordering fresh election, numerous botherations, tremendous expenditure, loss of public time and money and uncertainty of public representation from a particular constituency are involved. It is very easy to level but very difficult to prove a charge of corrupt practice. If it is sought to be proved only or mainly by way of oral evidence without there being contemporaneous documents to support it, the Court should be very careful in scrutinising the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice. Certain tests have been laid down as to the kind of evidence and proof that is required.

In the judgment reported at page 587 of the same report, the same provisions were again examined and it was held that it is unsafe in such cases to accept oral evidence on its face value without looking for assurance from such surer circumstances or unimpeachable documents.

In the judgment reported at page 813, the provisions were again examined and it was held that neither the editor nor the person connected with the publication of the paper had been

examined and the oral evidence was not supported by unimpeachable document or other circumstances and, therefore, the same was not reliable. In order to prove corrupt practice, the burden is on the person alleging corrupt practice to prove such allegations beyond reasonable doubt.

In AIR 1975 SC 208, (**Bhagat Ram alias Bhagtu Ram vs. Bhagat Ram and others**), the provisions contained in Section 123 (6) of the Act relating to corrupt practice as being in contravention of Section 77 were examined. On the facts of that case, it was found that the allegation regarding the hiring of the two Jeeps were not covered by the return of the election expenses and the petitioner in that case had failed to establish the allegations.

While keeping in mind the case law settled above in the several judgments and after carefully scrutinising the pleadings and evidence placed on record by the parties and after hearing the learned counsel appearing for them, at length, I find that the thrust is on the twin-grounds, that is, true and correct accounts have not been filed and the amount incurred in the election exceeds the prescribed limit, and further the respondent indulged in character assassination of the petitioner by distributing the news item by way of photostat copies and there are said to be corrupt practices within the meaning of the Act and same has materially affected the result of the election.

The points, falling under the provisions of Section 123 (6) of the Act, may be examined first, as to whether the return submitted by the respondent is true and correct statement of accounts, and whether the expenses incurred have exceeded the prescribed limit of Rs. 20,000/- as alleged by the petitioner. The question covers issue No. 3.

To examine this point, there is the statement of the petitioner coupled with the return and further there is a statement of PW-3, the printer. It is true that on reading page three of the return, an impression is given that the two vehicles were used for the purposes of election campaign right from October 20, 1993 to November 9, 1993, but a look at page one of the said return makes it amply clear that the two vehicles have been described at two different places and two different amounts have been reflected against these items. One vehicle was used from October 20 to November 9, 1993 at the rate of Rs. 400/- per day inclusive of mobile expenses and the other vehicle was used only for one day, i.e., on the date of the poll. Rs. 400/- were paid in respect of that vehicle and the same was not used for any other date. Respondent No. 1 while appearing in the witness box has clearly removed the doubt, even if there was any. Further, from the reading of the statements of PW-19 and PW-20, owners-cum-drivers of these vehicles, the picture gets clear that the said vehicle was used only for one day and Rs. 400/- were charged on that account. Both these persons have been examined by the petitioner himself and no room for doubt is left to arrive at the conclusion that one was used for the entire given period and the other was used only for one date, as shown in the return and, thus, no falsity can be found in the accounts submitted by respondent No. 1 in the return.

Admittedly, two permits were obtained for the use of the vehicles, as per Ext. PW-2/D-1, one was in respect of vehicle bearing No. PJQ-2342 and the other for vehicle bearing No. HP 02-3593. It is being high-lighted that there was no permit in respect of vehicle bearing No. HP 02-2677. The statement made by its owner-cum-driver, PW-20, Rajinder Singh, shows that this vehicle was not used on the date of the election and the vehicle remained at Bangana. He specifically stated that the vehicle was not used for taking any person from any where on that date. The witness has further stated that he had truly submitted the receipt Ext. PW-2/A-1 and charged Rs. 8,000/- at the rate of Rs. 400/- per day only. It is further in his statement that respondent No. 1 never distributed any pamphlets or any other document regarding electioneering, when the vehicle was driven by him. The argument that there was no log-book or a maintenance of accounts by these owners-cum-drivers, does not cut an ice, as both these witnesses are categorically clear in their statements, which stand duly corroborated by the receipts issued by them coupled with the return where there is a mention in respect of these two vehicles and payments made in that respect.

It has now to be seen as to whether Rs. 15,000/- were paid to Jagmohan Sharma, PW-3, for the purposes of painting on the walls and on the bidders. It is firstly to be examined whether the services of Jagmohan Sharma were engaged by respondent No. 1 for the desired purpose or not. It would only be thereafter that the question of payment of Rs. 15,000/- would arise.

The information which is said to be gathered by the petitioner in that respect relates to January 1, 1994. It is on this day, the petitioner came to know that the writings and paintings were done by this witness. He is contacted on that day. It is really surprising as to how the witness would part with a vital document and that too in original to the petitioner. The two receipts, in original, are said to have been handed over to the petitioner, who promised to return the same in next 4-5 days. It is further in evidence that respondent No. 1 never asked the witness to prepare the receipts in token of payment and Jagmohan Sharma has admitted in his statement that these were not prepared in the presence of respondent No. 1. In his statement, it is said that normally he does not issue any receipt and these are prepared only if insisted upon by the customer. Out of 20 witnesses examined by the petitioner only one witness PW-4 has stated that he saw Jagmohan Sharma doing painting work on one day. He was unable to give the date or other particulars, when asked during his cross-examination. According to him, he was conducting the election campaign for respondent No. 1. Reading of his statement does not inspire any confidence nor it has advanced the case of the petitioner any further. The Court is, thus, left with the statement of the painter, PW-3, coupled with the statement of the petitioner in this respect. The witness has not been able to give the dimensions of the banners and the cloth which he purchased. No bills have been produced by him in respect of the purchase of the cloth and other material used by him for the purposes of painting and writing. A serious doubt is created when the statement of this witness is read as a whole, when he says that respondent No. 1 was pleased with his work and said that the entire work conducted by this witness in the whole of the constituency must be varying between Rs. 40,000/- to Rs. 50,000/-. It is on this occasion that this witness told to respondent No. 1 in reply that the entire work was to the extent of Rs. 15,000/- only.

It is also to be found out as to how much truth is to be attached to such type of artist, painter or shop-keeper, who easily parted with the original receipts on the asking of the petitioner when he had nothing to do with him. In case the receipts were genuine and the same were lying with this witness these could not have been parted with so easily. He states that he earns about Rs. 3,000/- per month. No statement of accounts of income is being maintained by him nor he is filing any income tax return. He has stated that he has not kept any helper or servant or agent for carrying on business at his shop. It is one Ashok Kumar, who is wife's sister's son, who had helped him in the execution of the work. He was unable even to give the name of the shop from where the material was purchased and for how much. No witness has been produced from the side of the petitioner as to what was written by way of slogans on the walls or on the banners. The banners, the paintings and writings are said to have either come from the party headquarter or were carried out by the supporters of respondent No. 1 and by the members of 'Akhil Bhartiya Parishad'. The receipts are said to be prepared by PW-3 with his own pen. No revenue stamp has been affixed on Ext. PW-3/A, which pertains to the receipt of advance amount. The receipt Ext. PW-3/B makes out an interesting reading. The receipt is of Rs. 15,000/- and against item No. 1, it is said that Rs. 10,000/- have been billed against the work carried out on the walls running in 20,000 square feet and the rate given is flat rate, i.e., Rs. 1/- per square feet. The second item billed is 125 banners at the rate of Rs. 40/- per banner. The item includes the painting inclusive of the price of the cloth. In his statement, the witness has said that Rs. 1,500/- were paid for the purchase of the cloth for preparing the banners. In the later part of the statement, he has said that material was purchased for the work and it amounted to Rs. 1200/- to Rs. 1400/-. The witness was confronted with the receipt Ext. PW-3/B and he explained that he did not write the date of the receipt of Rs. 10,000/- as final receipt had already executed above. The receipt, as said above, is for Rs. 15,000/- only. Since two receipts had come on record, it appears that after having executed the receipt, the problem arose

about Rs.5,000/-, which were received earlier by way of advance. Thus, a note was added on the left hand side, after the receipt had been completed that Rs.5,000/- have already been received on October 18, 1993 and the remaining Rs. 10,000/- by way of balance, have been received in cash. In case this witness had already received Rs. 5,000/- by issuing a separate receipt on October 18, 1993, the second receipt Ext.PW-3/B would be for Rs. 10,000/- only and not for Rs. 15,000/-. The statement made by this witness, as PW-3, thus, stands falsified by his own act and conduct coupled with the contradictions appearing in the two receipts. No reliance can be placed on the statement of this witness, who appears to have been introduced as a convenient witness to the petitioner and once the statement is dis-believed, no fault can be founded with the return in respect of the expenditure incurred, as given in the return.

The matter can be examined from another angle also. In case Rs. 15,000/-, as are alleged, to have been paid by respondent No. 1 to this witness, are found to be false, the question of the reflection of this amount in the return does not arise and once this amount is excluded, the return appears to be perfectly in order and does not in any way exceed the statutory limit. There is no other piece of evidence placed on record by the petitioner, which could even remotely suggest that respondent No. 1 has incurred expenditure beyond the prescribed limit of Rs. 20,000/-. Issue No. 3, thus, in view of the foregoing discussion, can safely be held as not proved and has to be decided against the petitioner.

As has already been stated in the earlier part of this judgment that decision on issue No. 4 would arise only in case issue No. 3 is decided in affirmative. As issue No. 3 has already been held against the petitioner and it has been found that the expenditure made does not go beyond the statutory limit and non-disclosure thereof under Section 86 of the Conduct of Election Rules, the same has not materially affected the election of the petitioner nor the same can be said to be amounting to corrupt electoral practice, as required in terms of Section 123 (6) of the Representation of People Act.

Issue No. 4, thus, calls for no separate decision, in view of the findings recorded under issue No. 3.

On issue No. 5 the petition can succeed only if the hand-bills or pamphlets containing the alleged defamatory statement amounts to defaming the petitioner of his personal character and his conduct is believed as is the requirement of law in terms of Section 123 (4) of the Representation of People Act, 1951.

Before the evidence comprising the statements of the witnesses produced from the side of the petitioner is examined, it is necessary to keep in view that the "origin" dates back to September 22, 1993, for the publication of the news-item appearing in the Hindi daily newspaper (Uttam Hindu). There is not even a remote suggestion or mention that respondent No. 1 was in any way connected with the printing, publishing and circulation of this news-paper on September 22, 1993. The entire reading of the news is about the pre-poll happenings and assessment made by the correspondent on the basis of what he heard from the general public. As pointed earlier, the publisher, editor or the correspondent are not the parties to this petition. A suit as stated to have been filed claiming damages for defamation, which is pending before a competent court of law. Be that as it may.

Petitioner having come to know of the news never made any contradiction nor lodged any protest to it from the date of the publication of the news till the filing of the suit and that too after the filing of this election petition. In case the news-item is false or un-true or defamatory, it gives cause to the petitioner to take appropriate proceeding against the printer or publisher or correspondent of the news-item and no motive or malice for that purpose can be attributed to respondent No. 1. Unless there is positive and convincing evidence to the effect that it was respondent No. 1, who caused the publication and circulation of the news-paper carrying the

defamatory news, respondent No. 1 cannot be held guilty of corrupt practice within the meaning of the provisions applicable thereto.

The matter can also be looked from a different angle. The defamation even, if any, stood caused to the petitioner by the news-item appearing in Uttam Hindu and there is no direct evidence to connect the distribution of the photocopies of this news-item by way of hand-bills or pamphlets, which could be attributed to respondent No. 1 or with his consent or connivance. Not a single witness has stated that the distribution of the photocopies was made by respondent No. 1 himself and none of the witnesses examined has said even a word that respondent No. 1 or his supporters named in the petition and in evidence delivered any hand-bill to any of the witnesses examined from the side of the petitioner. The statements made by all the witnesses read together makes out that they saw the distribution being made by respondent No. 1 and his associates and they were told about it and its contents by certain other persons to whom the hand-bills are alleged to have been given.

Surprisingly, the information about the distribution of this material is alleged to have been passed on to the petitioner on November 28 and 29, 1993 and then again towards the end of December, 1993. The distribution is said to have been made on November 6, 7 and 8, 1993. In case the distribution was on that large scale, as is projected in the petition and in the evidence it would have come to the notice of the petitioner immediately after its distribution and no steps were taken to raise any objection or complaint either to the police or to any other authority. Almost all the witnesses after having come to know of the distribution of the material and its contents remained silent spectators till the result was declared and the information was supplied by them to the petitioner on November 28 and 29, 1993.

There is nothing on record to suggest as to from where the photostat copies were got prepared or how many copies were prepared and at whose instance and further there is no direct evidence which can be attributed to respondent No. 1 in getting the material circulated. The relevant portion in respect of the distribution of the material has already been given above in earlier part of this judgment where the statements made by the witnesses from the side of the petitioner have been referred to. The allegations are of general type and most of them are based on hear-say or what these witnesses were told by other persons. The requirement of Section 123 (4) of the aforesaid Act is that the publication has to be made by the candidate or by his agent or by any other person with the consent of the candidate or his election agent. This too has to be on the basis in respect of the statement of fact, which is false and which he either believes to be false or does not believe to be true, any reference to the personal character or conduct of any candidate and which has to be further a statement, which is reasonably calculated to prejudice the prospects of that candidate's election.

There is nothing in the statements of the witnesses that respondent No. 1 or his election agent gave consent for the distribution of the material which is said to be defamatory amounting to his character assassination.

A reading of the statements of the witnesses produced on behalf of the petitioner does not inspire confidence. PW-5 Bachan Singh states to have witnessed the rally on November 7, 1993. According to him, respondent No. 1 was present in the said rally. He did not witness any literature being distributed at that time nor he remembers who showed him the news item. The person who showed him the news item, is said to have taken it away. He also happened to read the news item in 'Uttam Hindu' on November 22, 1993. According to him, the information supplied to the petitioner was taken lightly. He could not name any of the persons who reported about the controversy to the petitioner.

The other witness in respect of publication and distribution of the news item is Malkiat Singh, PW-9. He has stated that Pawan Kumar, Bachiter Singh and Sureshanand in the

company of the respondent, distributed the pamphlet but he could not give the date on which these persons met him. He could not give the name of the person who gave him the pamphlet. In his statement he again said that he took the pamphlet from a child.

PW-10 Raghbir Singh states that they came to know that the petitioner lost the Assembly Election because of the publication in the news item 'Uttam Hindu' in the month of September, 1993. This part of the statement has nothing to do with the role that is alleged on the part of the respondent. He has also stated about the rally and he was sitting in the office of the workers when the copy of the pamphlet was shown to. He has stated nothing about the distribution or about the persons who were distributing the pamphlets in the rally.

PW-11 Tarlok Chand states himself to be an active member of the Congress Party. He saw the two Jeeps carrying the persons said above and according to him, lot of damage was caused to the prospects of the petitioner by the distribution of the photo copies of the pamphlets. It is Malkat Singh, according to this witness, who showed to the petitioner the photo copy of the news item Ext. PW-9/1. In his cross-examination at page 5, he categorically states that no distribution of the copies of the news item took place in his presence. Some other persons reported to him about the news during the course of election campaign and he could not give the date on which this information was given to him.

PW-12 Atma Ram, while returning home from Jole on November 8, 1993, saw a Jeep on the road in the evening. The respondent and his associates are stated to be present there distributing a pamphlet to the people. He returned to his house and it was after some time, as said by this witness, that one Onkar Singh from Ambra came and informed him about the distribution of photostat copies by the persons mentioned above. He met the petitioner thereafter on 28th or 29th November, 1993. He further states that no copy was given to him nor he read it. Similar is the statement of PW-13 Mehar Chand who saw some pamphlets being distributed and then says that one Mohinder Singh told him about the distribution of some pamphlets. To a question put to him in cross-examination, he could not name the persons inside the Jeep but respondent No. 1 was there. He has some grudge against respondent No. 1 as he contested an election against his father-in-law.

PW-15 Jagdish Chand Sharma gave the information about the distribution of the printed matter to respondent No. 1 on 28th and 29th November, 1993. He is the Secretary of the Congress Block Committee. In cross-examination he states that the information was supplied to the petitioner after two or three days of the publication of the news item. He states to have visited several houses for campaigning but no one from any house informed him about the pamphlet.

PW-16 Parma Nand witnessed the distribution of the material on November 8, 1993 from his shop. He saw respondent No. 1 getting down from the Jeep along with his associates who were distributing photo copies amongst the people who had gathered there. In his cross-examination, he states that he saw the photo copies of the news item of November 8, 1993 and he could not give the name of any person to whom the pamphlets were given. In the very next line, he states that he could not give the names of the persons who distributed the pamphlets. The reason given is that due to lapse of time, he is unable to give the names of those persons. He further states that he did not meet the petitioner from November 9 to November 27, 1993.

Some details which these witnesses have given, have already been mentioned in the earlier part of the judgment.

In order to establish that the publication of the false, defamatory statement which would amount to corrupt practice as per requirement of sub-section (4) of Section 123 of the Act, the

person laying challenge to the election of the returned candidate is required to prove that the offensive statement is one of fact. He is further required to show that the same has been published by the candidate or his agent or by a person with his consent and the said statement was false which the maker either believes it false or does not believe it to be true. It has further to relate to the personal character of the candidate and finally that it was calculated to prejudice the prospects of the other candidate. Unless and until the election-petitioner succeeds in establishing all these ingredients, no relief can be allowed.

Statement in the nature of opinion, unless it refers to facts, cannot come within the scope of this provision even if it is defamatory. It has to be based on ground realities without which it cannot be termed as 'A statement of fact'.

The question involved can be examined in another form also. Respondent No. 1, as per evidence placed on record, had no role in the printing, publication and distribution of the news paper. Even assuming, he had any, the incident relates to a date when even the election programme had not been published. He was not even a candidate at that point of time. A person would become a candidate only when he files nomination papers and not earlier. The section would not apply in the given situation. All acts of commission and omission prior to the nomination are outside the scope of this provision.

Assuming, the respondent No. 1 calculatedly got published or distributed several thousands photo copies of the news item during his election campaign to tarnish the character of the petitioner amongst the electorates so as materially affect the election result, the petition can be allowed only when the ingredients are proved beyond any shadow of doubt.

The printed line is conspicuously missing. There is further lack of proof that respondent No. 1 consented to it. There is nothing of that kind in the pleadings. So far as the election agent is concerned, admittedly, he was appointed for the polling date only and not earlier at any stage. There is nothing in the pleadings or in the evidence in respect of the material particulars attributing any role to the election agent or to the party workers in publication or distribution of the material in the shape of hand-bills or pamphlets.

The right which is given to a person to lay challenge to the election of a returned candidate is not an ordinary right available under the general law. It is a special right not even fundamental. It flows from the statute and is governed by the provisions of Representation of People Act. The Courts and the Tribunals dealing with these disputes, cannot travel beyond what has been prescribed by the statute itself. The provisions are in the form of a mandate and it is not permissible to add to it one's own philosophy or to read the provisions and interpret the same out of context. The provisions have been examined in hundred of cases from time to time and have been interpreted. Court has to keep it self within its own limits as interpreted.

Sub-section (2) of section 100 of the Act lays down that,

"If in the opinion of the High Court a candidate did not commit any corrupt practice and every such practice was committed without his consent, the High Court may decide that the election of the returned candidate is not void."

It is further interesting to note the developments prior to the filing of the present petition. Information about the alleged corrupt practice is alleged to have come to the notice of the petitioner when his supporters and friends expressed shock on his defeat after the declaration of the result. The relevant information is said to have been given to him on 28th and 29th November, 1993, and on 31st of December, 1993 and again on 1st January, 1994 when the petitioner came in contact with the painter Jagmohan Sharma (PW-3). How he came in his

contact, there is nothing in the petition. The petition is filed exactly after a week from the said information.

There is nothing on record which can be said to be a piece of direct evidence connecting the respondent No. 1 with the printing, publication or distribution of the alleged material.

Simply because the statement is false, is not enough. The petitioner has further to show that the publisher believed it to be false and further not believed it to be true in respect of the personal character or conduct of the candidate.

We have before us the evidence comprising oral statements of the witnesses only. This type of evidence has to be scrutinised and judged with utmost care and caution. The statements of few witnesses, most of whom can safely be termed as interested, cannot have the effect of putting the whole constituency and the will of the people at naught. The present dispute is not a lis between the two individuals but involves the entire constituency comprising of thousands of people who are electorates. It is at this stage relevant to notice the provision contained in Section 127-A of the Act. This provision deals with the restriction on the printing of pamphlets, posters etc. Under sub-section (1), no person is permitted to print or publish or cause to be published or printed any election pamphlet or poster which does not bear on its face the names and addresses of the printer and publisher thereof. Sub-section (2) further lays down restrictions on the person printing the pamphlet or poster. Declaration has to be given about the identity of the publisher signed by him and attested by two persons to whom he is personally known and the same is delivered by him to the printer in duplicate. Further, there has to be a reasonable time after the printing of the document when the copy of it is sent by the printer together with certain documents to the Chief Electoral Officer and to the District Magistrate. "Election pamphlet or poster" means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of persons or any placard or poster having reference to an election but it would not include any hand-bill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to the election agents or workers.

Sub-section (4) of this provision makes the person who contravenes it punishable with imprisonment for a term which may extend to six months, or with fine which may extend to Rs. 2,000/-, or with both.

In view of what has been said above, I have no hesitation in holding that the publication, printing and distribution of the pamphlet has not been satisfactorily established and no reliance can be placed on the statements of the witnesses which are vague, indefinite and do not fulfil the required test. Issue No. 5 has, thus, to be held against the petitioner.

Resultantly, there is no merit in the petition and the same is hereby ordered to be dismissed with costs which are quantified at rupees ten thousand.

Seal.

P. K. PALLI,
Judge.

October, 29, 1996.

